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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,075	12/21/2001	Nisar Asmed Khan	2183-5223US	1102
24247	7590	10/12/2004	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			MCKELVEY, TERRY ALAN	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/028,075

Applicant(s)

KHAN ET AL.

Examiner

Terry A. McKelvey

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

- ☐ Applicant's reply has overcome the following rejection(s): _____.
- ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5.

Claim(s) withdrawn from consideration: 6-22.

- ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- ☐ Other: _____.

Continuation of 2. NOTE: The proposed amendment to claims 1 and 5, replacing "gene product" with "NF-kappaB/Rel protein" introduce a new limitation to claims 1-5 that was not previously present in the examined claims and thus would require further consideration and search. The applicant indicates that the elements added to claims 1 and 5 were present in claim 15 and should not require a new search. The proposed amendments further define the element of at least one gene product which was previously searched by the Examiner. The applicant's argument for entry of the proposed amendment is not persuasive because claim 15 is a withdrawn claim dependent on a withdrawn claim drawn to a distinct invention that was not examined and thus the particular limitation proposed was not previously considered and search would require further consideration and search to consider claims having the new limitation. Also, the fact that the limitation is a new limitation to what was previously searched and examined does not mean that that particular limitation was searched and examined. Because an art rejection was set forth rejecting all examined claims. It is not necessary or possible to set forth all possible art rejections, drawn to various different combinations of additional limitations that were not set forth in the examined claims. It is only necessary and possible to set forth art rejections based upon the particular set of limitations present in the claims, which was done in the instant limitation.

Continuation of 5. does NOT place the application in condition for allowance because: the rejections remain of record due to the nonentry of the proposed amendment. All of applicant's arguments are drawn to the claims as amended by the proposed amendment and thus are not persuasive since the proposed amendment has not been entered.


TERRY MCKELVEY
PRIMARY EXAMINER